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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,833	10/30/2003	Cristiana Soldani	88265-7287	7187

29157 7590 08/10/2006

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CHICAGO, IL 60690-1135

EXAMINER
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PEARSE, ADEPEJU OMOLOLA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/695,833	SOLDANI, CRISTIANA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Adepeju Pearse	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-4, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritzsching, The Manufacturing Confectioner. With regard to claim 1, Fritzsching discloses a method of manufacturing hard candies comprising isomalt and an additive including acids. The starting material comprises water, isomalt and additives, evaporation is carried out at a temperature from 135°C to 140°C when cooking under vacuum (see figure 7) and cooling the product to obtain a hard candy with a water content of below 2%. It is inherent that the finished product would have improved transparency because it is processed under similar conditions, using similar ingredients (Pages 70-71).
4. With regard to claim 3, Fritzsching discloses cooking under vacuum (page 70, see fig. 7).
5. With regard to claim 4, Fritzsching discloses cooking under vacuum in order to achieve a water content below 2% (see fig. 7 and page 70 (*cooking*)).

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6. With regard to claim 6, Fritzsching discloses preparing isomalt candies using a precooked syrup at a temperature of 115°C to 120°C and then cooking under vacuum in an evaporator at a temperature from 135°C to 140°C (page 70 (*cooking*), see fig. 7).

7. With regard to claims 8-9, Fritzsching discloses isomalt as a sugar alcohol.

8. With regard to claim 10, Fritzsching discloses citric acid as a suitable acid additive (page 71).

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 5 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritzsching in view of Coia et al (US Pat. No. 4,971,798).

11. With regard to claim 5, Fritzsching failed to disclose evaporating in multiple stages. It would be obvious to one of ordinary skill in the art to expect that the evaporation of water is an experimental result variable based on the amount of water loss required and could be done in one stage or multiple stages.

12. With regard to claims 11-12, Fritzsching failed to disclose the percentage of acid in the hard candy. However, Coia et al teach a hard confection comprising hydrogenated isomaltulose (isomalt) and acids such as malic, citric, fumaric, etc (col 3 lines 3-7) at a range from 0.1-5%, which encompasses applicant's recited range (col 3 lines 10-15) for the purpose of providing tartness. Coia et al teach a processing temperature from 300°F to 330°F (148°C to 165°C) (col 2 line 9) and applicant recites a temperature not to exceed 145°C. Generally, differences in temperature will not support the patentability of subject matter encompassed by the prior art

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unless there is evidence indicating such temperature is critical. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Applicant has not provided evidence of the criticality of the claimed temperature.

Therefore, it would be obvious to one of ordinary skill in the art to modify the product of Fritzsching with the teaching of Coia et al by incorporating acids at the specified range for the purpose of providing tartness.

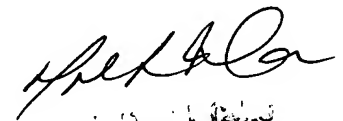
### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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